

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

MICHAEL BRISENO, Individually and on Behalf) of All Others Similarly Situated,)	Case No.: 15-cv-412
)	CLASS ACTION COMPLAINT
Plaintiff,)	
vs.)	
)	Jury Trial Demanded
DIVERSIFIED CONSULTANTS, INC.,)	
)	
Defendant.)	

INTRODUCTION

1. This class action seeks redress for collection practices that violate the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (the “FDCPA”), and the Wisconsin Consumer Act, Chapters 421-427, Wisconsin Statutes (the “WCA”).

JURISDICTION AND VENUE

2. The court has jurisdiction to grant the relief sought by the Plaintiff pursuant to 15 U.S.C. § 1692k and 28 U.S.C. §§ 1331 and 1337. Venue in this District is proper in that Defendant directed its collection efforts into the District.

PARTIES

3. Plaintiff Michael Briseno is an individual who resides in the Eastern District of Wisconsin (Milwaukee County).

4. Plaintiff is a “consumer” as defined in the FDCPA, 15 U.S.C. § 1692a(3), in that Defendant sought to collect from Plaintiff a debt allegedly incurred for personal, family or household purposes, namely cellular telephone services.

5. Plaintiff is also a “customer” as defined in the Wisconsin Consumer Act, Wis. Stat. § 421.301(17), in that he engaged in a consumer transaction.

6. Defendant Diversified Consultants, Inc. (“DCI”) is a foreign corporation with its principal place of business located at 10550 Deerwood Park Blvd., Suite 309, Jacksonville, Florida 32256.

7. DCI is engaged in the business of a collection agency, using the mails and telephone to collect consumer debts originally owed to others.

8. DCI is engaged in the business of collecting debts owed to others and incurred for personal, family or household purposes. DCI is a debt collector as defined in 15 U.S.C. § 1692a and Wis. Stat. § 427.103(3).

FACTS

9. Plaintiff entered into a consumer transaction with “US Cellular” for cellular telephone service.

10. On or about May 25, 2014, DCI mailed a debt collection letter to Plaintiff regarding an alleged debt, allegedly owed to US Cellular. A copy of this letter is attached to this complaint as Exhibit A.

11. Upon information and belief, Exhibit A is a form letter, generated by computer, and with the information specific to Plaintiff inserted by computer.

12. Exhibit A states “Collection Fees: \$0.00.”

13. Exhibit A threatens to collect a fee. Although the “collection fee” in Exhibit A is \$0.00, the letter implies that there could be a collection fee added to the debt in a future letter. *Tylke v. Diversified Adjustment Serv.*, 2014 U.S. Dist. LEXIS 153281 (E.D. Wis. Oct. 28, 2014)

14. Plaintiff’s cellular telephone service contract with US Cellular was for services, and involved agreements to render services and defer payment, under which finance charges, including but not limited to early termination fees, were or could be imposed, and which

obligation was payable in installments. Such agreements are “consumer credit transactions” under the WCA, Wis. Stat. §§ 421-427.

15. Wis. Stat. § 421.301(10) defines a “consumer credit transaction”:

a consumer transaction between a merchant and a customer in which real or personal property, services or money is acquired on credit and the customer’s obligation is payable in installments or for which credit a finance charge is or may be imposed, whether such transaction is pursuant to an open-end credit plan or is a transaction involving other than open-end credit. The term includes consumer credit sales, consumer loans, consumer leases and transactions pursuant to open-end credit plans.

16. The WCA specifically prohibits the attachment of collection fees and other “default charges” on consumer credit transactions, even if the fee is separately negotiated. Wis. Stat. § 422.413(1) provides:

no term of a writing evidencing a consumer credit transaction may provide for any charges as a result of default by the customer other than reasonable expenses incurred in the disposition of collateral and such other charges as are specifically authorized by chs. 421 to 427.

17. Neither Wis. Stat. § 422.202, entitled “Additional charges,” nor any other section of the WCA, lists collection fees as a permissible fee a creditor may charge in connection with a consumer credit transaction.

18. Because cellular telephone service contracts are consumer credit transactions, Exhibit A falsely states or implies that DCI has a right to add collection fees to consumers’ alleged cellular telephone service debts.

19. Even if a provision of any agreement between Plaintiff and US Cellular for the provision of cellular telephone services would purport to permit US Cellular to impose a collection fee, the WCA prohibits such fees. Wis. Stat. § 421.106(1) (“Except as otherwise provided in chs. 421 to 427, a customer may not waive or agree to forego rights or benefits under

chs. 421 to 427.”); *See also Lox v. CDA, Ltd.*, 689 F.3d. 818 (7th Cir. 2012) (false representation that attorney fees would be added when they could not be, violated 1692e).

20. 15 U.S.C. § 1692e generally prohibits “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

21. 15 U.S.C. § 1692e(2) specifically prohibits the “false representation of the character, amount, or legal status” of an alleged debt, or the “false representation of...compensation which may be lawfully received by any debt collector for the collection” of an alleged debt.

22. 15 U.S.C. § 1692e(5) specifically prohibits threatening “to take any action that cannot legally be taken or that is not intended to be taken.”

23. 15 U.S.C. § 1692e(10) specifically prohibits the “use of any false representation or deceptive means to collect or attempt to collect any debt.”

24. 15 U.S.C. § 1692f generally prohibits a debt collector from using “unfair or unconscionable means to collect or attempt to collect any debt.”

25. 15 U.S.C. § 1692f(1) specifically prohibits the “collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.”

26. Wis. Stat. § 427.104(1)(j) specifically prohibits a debt collector from “[c]laim[ing], or attempt[ing] or threaten[ing] to enforce a right with knowledge or reason to know that the right does not exist.”

27. Wis. Stat. § 427.104(1)(L) also specifically prohibits a debt collector from “[t]hreaten[ing] action against the customer unless like action is taken in regular course or is intended with respect to the particular debt.”

COUNT I -- FDCPA

28. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

29. DCI's threat to collect a fee in Exhibit A is a false, deceptive, and/or misleading representation to the unsophisticated consumer recipient.

30. DCI has no legal basis for collecting a collection fee on Plaintiff's alleged cellular telephone service debt. The WCA prohibits such fees.

31. Exhibit A falsely represents that Defendant is lawfully entitled to collect a fee.

32. Exhibit A creates a false impression as to its authorization or approval for collecting a fee.

33. Defendant violated 15 U.S.C. §§ 1692e, 1692e(2), 1692e(5), and 1692e(10).

COUNT II -- FDCPA

34. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

35. DCI's threat to add a collection fee when neither DCI nor US Cellular are entitled to such a fee, is an unfair and/or unconscionable method by which to try and collect an alleged debt.

36. As these statements are threatening and/or confusing to the unsophisticated consumer recipient so as to falsely imply that the creditor is entitled to receive a collection fee, they are an unfair and/or unconscionable method for attempting to collect a debt.

37. Defendant violated 15 U.S.C. §§ 1692f, and 1692f(1).

COUNT III – WCA

38. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

39. Exhibit A claims, attempts, or threatens to enforce a right to a collection fee, even though Defendant knew or should have had reason to know that no such right existed at the time the letters were sent.

40. Defendant violated Wis. Stat. §§ 427.104(1)(j) and 427.104(1)(L).

CLASS ALLEGATIONS

41. Plaintiff defines the class as (a) all natural persons in the State of Wisconsin (b) who were sent a collection letter by Defendant that sought to collect alleged debts owed to US Cellular, (c) seeking to collect a debt for personal, family or household purposes, (d) which threatens to include collection fees on the original debt, (e) on or after April 7, 2014, (g) that was not returned by the postal service.

42. The Class is so numerous that joinder is impracticable. Upon information and belief, there are more than 50 members of the Class.

43. There are questions of law and fact common to the members of the class, which common questions predominate over any questions that affect only individual class members. The predominant common question is whether Exhibit A violates the FDCPA and/or the WCA.

44. Plaintiff's claims are typical of the claims of the Class members. All are based on the same factual and legal theories.

45. Plaintiff will fairly and adequately represent the interests of the Class members. Plaintiff has retained counsel experienced in consumer credit and debt collection abuse cases.

46. A class action is superior to other alternative methods of adjudicating this dispute. Individual cases are not economically feasible.

JURY DEMAND

47. Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and the Class and against Defendant for:

- (a) actual damages;
- (b) statutory damages;
- (c) attorneys' fees, litigation expenses and costs of suit; and
- (d) such other or further relief as the Court deems proper.

Dated: April 7, 2015

ADEMI & O'REILLY, LLP

By: /s/ Mark A. Eldridge
Shpetim Ademi (SBN 1026973)
John D. Blythin (SBN 1046105)
Mark A. Eldridge (SBN 1089944)
3620 East Layton Avenue
Cudahy, WI 53110
(414) 482-8000
(414) 482-8001 (fax)
sademi@ademilaw.com
jblythin@ademilaw.com
meldridge@ademilaw.com